

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Patent Application No. 10/649,473

Confirmation No. 5384

Applicant: Klingensmith et al.

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Docket No.: 260442 (Client Reference No. 5010US)

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**TERMINAL DISCLAIMER UNDER 37 CFR 1.321**

Assignee, Cleveland Clinic Foundation, is the owner of 100 percent interest in the above-identified application (hereinafter "the present application").

Pursuant to 37 CFR 3.73(b), the assignment of the present application from the inventors, or chain of title from the inventors, to the Assignee was recorded in the Patent and Trademark Office at Reel 014440, Frame 0924, on August 26, 2003.

Also, pursuant to 37 CFR 3.73(b), the undersigned has reviewed all the evidentiary documents accompanying or referred to in this Terminal Disclaimer and, to the best of the undersigned's knowledge and belief, certifies that title is in the Assignee.

Assignee, through its attorneys and agents, hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the present application that would extend beyond the expiration date of the full statutory term defined in 35 USC 154 to 156 and 173 of U.S. Patent No. 6,381,350 B1 (hereinafter "the prior patent"), as shortened by any terminal disclaimer filed prior to the grant of the prior patent. Assignee, through its attorneys and agents, further agrees that any patent granted on the present application shall be enforceable only for and during such period that its legal title is the same as the legal title to

the prior patent, this agreement to run with any patent granted on the present application and to be binding upon the grantee, its successors, and assigns.

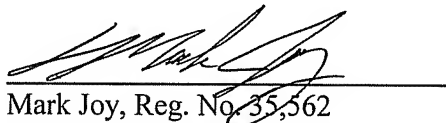
In making the above disclaimer, Assignee does not disclaim the terminal part of any patent granted on the present application that would extend to the expiration date of the full statutory term of the prior patent as defined in 35 USC 154 to 156 and 173 in the event the prior patent terminates prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer filed prior to the grant of the patent. Examples of such non-applicable termination of the prior patent are as follows: (1) prior patent expires for failure to pay a maintenance fee, (2) prior patent is held unenforceable, (3) prior patent is found invalid by a court of competent jurisdiction, (4) prior patent is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, (5) prior patent has all claims canceled by a reexamination certificate or reissuance, and (6) prior patent is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

In making this disclaimer, Assignee reserves the right to extend the term of any patent granted on the present application for a period of delay, in the event the delay is defined by statute and/or regulation as allowing, or providing for, an extension of term. This right is reserved in the event the prior patent terminates, or does not terminate, prior to the expiration of its full statutory term. Examples of such a delay include regulatory delay, and delay due to appellate review.

The undersigned is empowered to act on behalf of the Assignee.

The Commissioner is hereby authorized to charge to Deposit Account 12-1216 the fee of \$130.00 set forth in 37 CFR 1.20(d). A duplicate copy of this document is enclosed herewith for that purpose (unless submitted via EFS-Web).

Respectfully submitted,



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